

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>DAVID FELTON,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>1:11CV759</b>
	)	
<b>JOSEPH HALL,</b>	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDATION AND ORDER**  
**OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the state of North Carolina, has submitted a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b), along with an application to proceed *in forma pauperis*. In the motion, Petitioner is attacking his conviction or sentence rather than seeking to remedy a defect in the collateral review process or other non-merit aspect of the ruling. The motion for reconsideration therefore must be construed as a habeas corpus petition under 28 U.S.C. § 2254. *See Gonzalez v. Crosby*, 545 U.S. 524 (2005); *United States v. Winestock*, 340 F.3d 200 (4th Cir. 2003). As such, Petitioner's pleading is defective because he has failed to file his claims on the proper § 2254 forms. *See Rules Governing Section 2254 Cases Rule 2(c)*.

There is no need to put Petitioner through the extra work of submitting his claims on the proper forms, however, because Petitioner states in his motion that he has already

challenged this conviction in previous § 2254 actions during the 1970's and early 1980's. Therefore, the present pleading should be dismissed for lack of jurisdiction because of Petitioner's failure to obtain permission from the Fourth Circuit for a second or successive § 2254, as is required by 28 U.S.C. § 2244. *See Winestock*, 340 F.3d at 200.

*In forma pauperis* status will be granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

**IT IS FURTHER ORDERED** that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2254 actions in this Court and Motions for Authorization in the court of appeals, and four copies of § 2254 forms (more copies will be sent on request). Petitioner should keep the original and two copies of the completed § 2254 forms which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

**IT IS THEREFORE RECOMMENDED** that Petitioner's "Rule 60(b)" motion be construed as an attempt by Petitioner to file a second or successive § 2254 action.

**IT IS FURTHER RECOMMENDED** that this action be dismissed due to Petitioner's failure to obtain certification from the Fourth Circuit as required by 28 U.S.C. § 2244 and Fourth Circuit Local Rule 22(d).

This the 10th day of January, 2012.

/s/ P. Trevor Sharp  
United States Magistrate Judge